ON BEING MENTIONED

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THE HONOURABLE SRI JUSTICE K.C. BHANU

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WRIT PETITION No.12563 of 2005

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ORDER:

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When the matter was called on 26.09.2005, none appeared for the petitioner. After hearing the counsel for the respondents, the order was dictated. After dictation of the order on 26.09.2005, the learned counsel for the petitioner requested to post the matter under the caption "for being mentioned". Accordingly, the matter is posted today i.e. on 29.09.2005 under the caption "for being mentioned".

The learned counsel for the petitioner contended that there is only one siphon is in existence and the petitioner's lands were only Ayacut lands, and therefore, under Section 16 and 17 of the Water Users Association Act, it is only Water Users Association that can regulate and maintain the irrigation tanks and he further contended that the Collector has no power to order for reconstruction and the lands of Jarugumalli will not come under the Ayacut Kota Panta Kalva, and hence, he prays to allow the writ petition.

It is not in dispute that Pantakota tank is not a minor irrigation tank and it is under the control of the Irrigation Department.

The Executive Engineer filed a detailed counter affidavit stating that there is a channel from foreshore of the tank to feed Jarugumalli village ayacut lands which crosses Tasallakalava river in Survey Nos.1798 and 1583 and another channel crosses Tasallakalava river in Survey Nos.1680, 659 and 656 to feed Kokkupadu village lands and the structures constructed long back across

Tasallakalava river to feed Kokkupadu lands were also damaged and not functioning. Basing on the representation of ryots, estimates were prepared for both the structures. But, the estimate for reconstruction of siphon across Tsallakalava River to feed Jarugumalli lands was also sanctioned. It is also stated that the respondents never shifted the location of siphon. One siphon is proposed for Jarugumalli village lands and another siphon is proposed for Kokkupadu village lands separately.

Since the petitioner counsel is seriously disputing about the location of siphon at Kokkupadu village, the same cannot be determined and dissolved by this Court as to how many siphons are in existence and which siphon is required to feed the lands of Jarugumalli village or Kokkupadu village. The provisions relied on by the learned counsel for the petitioner has no application to the facts of the case, because, admittedly, these provisions relating to the members of the Water Users Association in respect of maintenance of the channel and also for regulation of the canal. But, it is not a case of maintenance and regulation of canal.

Having regard to the facts and circumstances of the case and in view of the fact that there are two siphons are proposed at the existing channels, the prayer in the writ petition cannot be granted.

Accordingly, the writ petition is dismissed leaving open all the remedies available to the petitioner under law.

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(K.C. BHANU, J)

Date: 29.09.2005

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